



***de maximis, inc.***

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November 15, 2016

**VIA ELECTRONIC & US MAIL**

Ms. Jennifer LaPoma  
ATTN: Lower Passaic River Remedial Project Manager  
Emergency and Remedial Response Division  
U.S. EPA, Region 2  
290 Broadway, 20th Floor  
New York, New York 10007

**Re: Monthly Progress Report No. 50 – October 2016  
Lower Passaic River Study Area (LPRSA)  
River Mile 10.9 Removal Action  
CERCLA Docket No. 02-2012-2015**

Dear Ms. LaPoma:

**de maximis, inc.** is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement. The CPG has revised this Progress Report to address the Region's direction in its September 1, 2015 letter.

**(a) Actions which have been taken to comply with this Settlement Agreement during the previous month.**

**Meetings/Conference Calls**

- None

**Correspondence**

- On October 17, CPG submitted the September 2016 Progress Report to EPA Region 2 (Region 2).

**Work**

- CPG subcontractor laboratory completed analysis of pore water samples collected from SPME samplers retrieved in August and co-located surficial sediment.
- CPG initiated validation of pore water and co-located surficial sediment sample data.
- CPG continued review of the 2015 RM 10.9 Post-Construction Bathymetry Survey data.

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- CPG continued development of responses to Region 2 comments on the draft RM 10.9 Removal Action Final Construction Report.

**(b) Results of Sampling and Tests**

- PDFs of the lab data packages, data validation reports, and copies of the lab EDD files that were received in October are being provided to Region 2 under separated cover. A copy of the transmittal memo is attached.
- A Region 2 MEDD submittal of data validated in October 2016 will be provided as an upload to the EPA SharePoint Site.

**(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction**

- CPG will respond to Region 2 comments on revised draft Post-Construction Monitoring (PCM) QAPP and LTMMMP.
- CPG will complete validation of pore water and co-located surficial sediment sample data.
- CPG will prepare a field summary report for the collection and analysis of pore water and co-located surficial sediment samples.
- CPG will complete processing of the 2015 RM 10.9 Post-Construction Bathymetry Survey data and prepare a data report.
- CPG will provide responses to Region 2 comments on the draft River Mile 10.9 Removal Action Final Construction Report to Region 2.

**(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays**

The CPG has agreed to retain only near-term problems and concerns in the monthly reports moving forward pursuant to the direction in Region 2's September 1 letter; however, previous Progress Reports through July 2015 document in Section (d) significant issues and matters largely the result of actions and decisions by the Region that have significantly delayed and complicated the completion of the RM 10.9 Removal Action. The removal of this previous information does not in any way lessen its impact on the completion of the RM 10.9 Removal Action.

- **Post-Construction Monitoring Plan** - The CPG attempted to install SPME pore water samplers into the RM 10.9 cap after receiving Region 2's conditional approval of the draft PCM QAPP on August 26 -27, 2015. The combination of armor stone, geotechnical fabric and accumulated sediment prevented the successful installation of pore water samplers at nine of ten locations identified in the PCM QAPP. CPG provided recommendations to Region 2 for installation of remaining pore water samplers on September 24 which the Region rejected. CPG provided a second set of alternative pore

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water sampling locations to Region 2 on October 12 based on land-side access to the RM 10.9 cap during lunar low tides. Although two of the three pore water samplers retrieved on October 27 were found to have been damaged during installation through the armor stone and geotextile cap layers, the laboratory was able to attain detection levels substantially lower than originally specified in the draft PCM QAPP. CPG recommended another attempt to install remaining pore water samplers during a December 9 – 11 day-time low tide pending resolution of sampler installation locations. Region 2 provided conditional approval of the draft PCM QAPP on December 8 based on revised installation locations. Installation of pore water samplers at seven (7) of the nine (9) remaining locations was completed. The CPG inquired on January 5, 2016 as to Region 2 approval of the revised draft PCM QAPP submitted on December 4 which was finalized after receipt of Region 2's revised sampling locations. Region 2 responded on January 6 that it was finalizing its review of the revised draft PCM QAPP. Minor comments on the draft PCM QAPP were provided by Region 2 on February 11. The CPG retrieved on March 8 – 10 the pore water samplers installed in December 2015 and found samplers damaged apparently from ice and debris. The CPG notified Region 2 on March 30 that it would not analyze the samples from this event and would attempt another pore water sampler installation later in 2016. In response to Region 2's April 4 correspondence, a re-sampling event of all ten (10) locations was conducted June 3 – 5 utilizing shortened samplers and a boat for access to the two (2) sampling locations with limited accessibility from the shoreline. With the agreement of pore water sampling locations, CPG submitted a revised LTMMMP and revised PCM QAPP on April 12. Region 2 provided comments on the revised draft PCM QAPP and revised draft LTMMMP on August 3. CPG submitted a revised draft PCM QAPP to Region 2 on August 17 and submitted a revised draft LTMMMP on September 2.

- **Removal Action Final Construction Report** - Response to Region 2's comments on the draft River Mile 10.9 Removal Action Final Construction Report will be delayed pending resolution of the long-term cap sampling/monitoring issues and implementation of a feasible chemical monitoring method. The CPG does take exception and does not agree to the Region's comments directing the CPG to remove text related to implementability and feasibility that were included in the draft report.

Two significant issues remained unresolved and need to be satisfactorily addressed by the Region:

- **Tierra/Maxus/Occidental (TMO) UAO** - There is still no satisfactory resolution concerning the Tierra/Maxus/Occidental (TMO) participation at RM 10.9. The Region has failed to require the TMO parties to participate in a significant and substantive degree that is commensurate with their obligation. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action. Subsequent requirements directed by the Region such as a utility survey of the 0.5 acre no dredge zone are inconsistent with TMO's responsibility.

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- **RM 10.9 Force Majeure – June 2013** - The CPG strongly disagrees with the Region's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. CPG addressed this issue in its July 31, 2013 letter to which the Region has never responded. EPA's rationale for denial was inconsistent with terms and definitions in the RM 10.9 AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - were clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. As noted above it is the Counties obligation to ensure that their bridges are operable and ready to open upon notice. Finally, the CPG voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so.

If you have any questions, please contact Rob Law or me at (908) 735-9315.

Very truly yours,

**de maximis, inc.**

  
Willard Potter  
CPG Project Coordinator

Attachment

cc: Christopher Jimenez, EPA Region 2  
Sarah Flanagan, EPA Region 2 Office of Regional Counsel  
William Hyatt, CPG Coordinating Counsel  
Jay Nickerson, NJDEP  
David Marabello, CDM-Smith  
Scott Kirchner, CDM-Smith  
Elizabeth Franklin, US Army Corps of Engineers  
Reyhan Mehran, NOAA  
Clay Stern, FWS  
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## Letter of Transmittal

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Attention:	Jennifer LaPoma ATTN: Lower Passaic River Remedial Project Manager Emergency and Remedial Response Division U.S. EPA, Region 2 290 Broadway, 20 <sup>th</sup> Floor New York, NY 10007	Date:	November 14, 2016
Project reference:	Lower Passaic River Study Area (LPRSA) River Mile 10.9 Removal Action CERCLA Docket No. 02-2012- 2015	Project number:	60270961

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### We are sending you the following:

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Number of originals:	Number of copies:	Description:
<hr/>	2	Analytical Data Reports
<hr/>	2	Analytical Data Validation Reports
<hr/>	2	Analytical Data Electronic Data Deliverables (EDDs)

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Please find enclosed CDs containing PDFs of the River Mile 10.9 Removal Action SPME and sediment sampling analytical data reports, data validation reports, and laboratory EDDs

The following reports are included (listed by report type and laboratory).

**Analytical Data Reports, Alpha Analytical**  
L1627445.pdf

**Analytical Data Reports, SGS North America**  
A9186 Project Binder-Rev110216.pdf  
A9188 Project Binder Rev11416.pdf  
A9189 Project Binder Rev 110416.pdf

**AECOM Analytical Data Validation Reports, SGS North America**  
A986-A9188-SPME validation memo.pdf

A9189-Sediment validation memo.pdf

**Analytical Data EDDs, Alpha Analytical**

L1627445.LPR RM10.9 LTM SPME.AECOM.zip

**Analytical Data EDDs, SGS North America**

A9186\_EDD\_PCB

A9186-EDD-PAH

A9186\_EDD\_DF

A9188\_EDD\_PCB

A9188\_EDD\_PAH

A9188\_EDD\_DF

A9189\_EDD\_PCB

A9189\_EDD\_PAH

A9189-EDD-DF

Please let me know if you have any questions or need any further information.

Laura Kelmar, Project Controls Manager

cc: W. Potter, dmi